

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 771 Environmental Regulation
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, Overdorf
TIED BILLS: **IDEN./SIM. BILLS:** SB 816

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N, As CS	Rivera	Miller
2) Agriculture & Natural Resources Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Counties must implement a recyclable materials recycling program within their boundaries and are encouraged to work with municipalities to do so. Many counties and municipalities have single stream recycling programs in place that allow all recyclable material to be placed in a single container. This method increases the potential for contamination and rejection of recyclable material. Local governments may contract these duties to private companies, but current contracts are not required to address contamination of recyclable materials.

State law allows water management districts and the Department of Environmental Protection (DEP) to impose reasonable conditions and require environmental resource permits (ERP) to ensure certain construction activities comply with the law and will not harm water resources. Some projects can be exempted from ERP permitting if the project meets specific statutory restrictions. Local governments may require proof of the exemption.

An ERP exception exists for the replacement or repair of a dock or pier in the same location and under specific conditions. The exception does allow for minor deviations to upgrade the dock or pier to current structural and design standards.

The bill revises policies relating to Florida's environmental regulation by:

- Requiring local governments to address non-hazardous contamination of recyclable material in contracts with residential recycling collectors and recovered materials processing facilities. Contracts executed or renewed after July 1, 2019 must:
 - Define the term "contaminated recyclable material" in a manner that is appropriate for the local community, taking into consideration available recyclable material markets, available waste composition studies, and other relevant factors;
 - Include strategies and obligations of the parties to reduce the amount of contaminated recyclable material being collected or processed; procedures for identifying, documenting, managing, and rejecting contaminated recyclable materials; and authorized remedies in handling contaminated containers; and
 - For collection contracts, provide education and enforcement measures to be used to reduce contaminated recyclable material.
- Prohibiting local governments from requiring a person claiming that a particular activity meets an ERP exception to provide further verification from DEP; and
- Revising the ERP exception for the replacement or repair of existing docks and piers to allow for the repair or replacement if it is within five feet of the same location, no larger than the existing dock or pier, and no additional aquatic resources are adversely and permanently impacted.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Recyclable Materials and Contamination

Present Situation

Recycling is any process by which solid waste¹ or materials that would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or intermediate or final products.² Recyclable materials are materials that are capable of being recycled and would otherwise be processed or disposed of as solid waste.³

As Florida's recycling rate continues to increase, future growth is dependent on continued and increasing demand for collected recyclable materials.⁴ Over the past few years, the industry has seen a marked decline with Florida's biggest consumer, China, virtually closing off many of its previously vibrant markets for recyclable materials.⁵

Local Government Recycling Programs

Counties have the responsibility and authority to operate solid waste facilities to meet the needs of all incorporated and unincorporated areas of the county, with some exceptions allowing municipalities to exercise that responsibility within their boundaries.⁶ Counties are required to implement a recyclable materials recycling program and encouraged to form cooperative arrangements with municipalities to implement these programs.⁷

Recycling programs must recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and offer these materials for recycling: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash.⁸ Local governments are also encouraged to separate all plastics, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.⁹

Each county must implement a recyclable materials recycling program with a goal of recycling 60 percent of recyclable solid waste by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020 (recycling goal).¹⁰ To assess the progress in meeting the recycling goal, counties must provide information to the Department of Environmental Protection (DEP) regarding their annual solid waste management program and recycling activities by April 1 of each year.¹¹

¹ S. 403.703(36), F.S., defines solid waste as sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

² S. 403.703(31), F.S.

³ S. 403.703(30), F.S.

⁴ DEP, *Florida and the 2020 75% Recycling Goal* 15, https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Mar. 5, 2019) (hereinafter *Florida 2020 Recycling Goal*).

⁵ See *Florida 2020 Recycling Goal* 15 (last visited Mar. 5, 2019).

⁶ S. 403.706(1), F.S.

⁷ S. 403.706(2)(a), F.S.

⁸ S. 403.706(2)(f), F.S.

⁹ S. 403.706(2)(g), F.S.

¹⁰ S. 403.706(2)(a), F.S.

¹¹ S. 403.706(7), F.S.

Many counties and municipalities have instituted single stream recycling programs.¹² Single stream recycling programs allow all accepted recyclables to be placed in a single, curbside recycling cart, comingling materials from paper and plastic bottles to metal cans and glass containers.¹³ Single stream recycling programs have been marginally successful in providing curbside collection efficiency by increasing the amount of recyclables collected and residential participation.¹⁴

Local Government Contracting for Solid Waste

A county or municipality may enter into a written agreement with other persons to fulfill some or all of its solid waste responsibilities.¹⁵ In developing and implementing recycling programs, counties and municipalities are required to consider the collection, marketing, and disposition of recyclable materials by persons engaged in the business of recycling, whether or not the persons are operating for profit.¹⁶ Counties and municipalities are encouraged to use for-profit and nonprofit organizations in fulfilling their solid waste responsibilities.¹⁷

Curbside Recyclable Materials Collection

In the development and implementation of a curbside recyclable materials collection program, a county or municipality must first negotiate with any franchisee operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality.¹⁸ If the county or municipality and franchisee fail to reach an agreement within 60 days, the county or municipality may solicit proposals (RFP) from other persons and select the lowest responsible proposal to undertake the curbside recyclable materials collection responsibilities for the county or municipality notwithstanding the franchise agreement.¹⁹

Contamination of Recyclable Material

Contamination of recyclable material occurs when residents place materials that are not recyclable into curbside recycling bins (e.g., plastic bags, styrofoam peanuts, and other increasingly popular thin plastics).²⁰ While a material recovery facility is equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process resulting in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair, or replacement needs.²¹ In addition to increased recycling processing costs, contamination also results in poorer quality recyclables and increased rejection and landfilling of unusable materials.²² Some local governments have contamination rates reaching more than 30-40% by weight.²³

¹² Florida 2020 Recycling Goal 13 (last visited Mar. 5, 2019).

¹³ Florida 2020 Recycling Goal 13 (last visited Mar. 5, 2019).

¹⁴ *Id.*

¹⁵ S. 403.706(8), F.S.

¹⁶ S. 403.706(10).F.S.

¹⁷ S. 403.706(10), F.S.

¹⁸ S. 403.706(9), F.S.

¹⁹ S. 403.706(9), F.S.

²⁰ See Florida 2020 Recycling Goal 11 (last visited Mar. 5, 2019).

²¹ Florida 2020 Recycling Goal 13 (last visited Mar. 5, 2019).

²² *Id.*

²³ *Id.*

Effect of Proposed Changes

The bill creates s. 403.706(22), F.S., requiring counties and municipalities to address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material. Local governments may not require residential recycling collectors or recovered materials processing facilities to collect or process contaminated recyclable material except pursuant to a contract consistent with the subsection. The bill defines a “residential recycling collector” as a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality. “Recovered materials processing facility” is defined in statute.²⁴

Contracts must define the term “contaminated recyclable material” in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. Local government contracts, RFPs, or other solicitation with residential recycling collectors must also do the following:

- Include respective strategies and obligations of the county or municipality and the residential recycling collector to reduce the amount of contaminated recyclable material being collected;
- Include procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material;
- Include authorized remedies used if a container, cart, or bin contains contaminated recyclable material; and
- Provide education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

The bill requires local government contracts, RFPs, or other solicitation with a recovered materials processing facility to do the following:

- Include respective strategies and obligations of the county or municipality and the facility to reduce the amount of contaminated recyclable material being collected and processed;
- Include procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material; and
- Include authorized remedies used if a container or truck load contains contaminated recyclable material.

The bill clarifies that the term “contaminated recyclable material” used in the subsection refers to recyclable material that is comingled or mixed with solid waste or other nonhazardous material and not “contamination” as used in ch. 376, F.S. (pollutant discharge), other sections of ch. 403, F.S., or other hazardous waste remediation. The bill provides that these new contract requirements apply to contracts executed or renewed after July 1, 2019.

Verification of Environmental Resource Permit Exceptions

Present Situation

State law provides that a water management district (WMD) or the Department of Environmental Protection (DEP) may require an environmental resource permit (ERP) and impose reasonable conditions necessary to assure the construction or alteration of any stormwater management system,²⁵

²⁴ S. 403.703(29), F.S., defines a “recovered materials processing facility” to mean a facility engaged solely in the storage, processing, resale, or reuse of recovered materials. Such facility is not a solid waste management facility if it meets the conditions of s. 403.7045(1)(e), F.S.

²⁵ S. 373.403(10), F.S., defines “stormwater management system” to mean a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

dam,²⁶ impoundment,²⁷ reservoir,²⁸ appurtenant work,²⁹ or works³⁰ complies with state law and applicable rules promulgated thereunder, and will not be harmful to water resources.³¹ A person proposing such construction or alteration must apply to the WMD or DEP for an ERP permit authorizing the construction or alteration. The application must contain the applicant's name and address; the name and address of the owner of the land where the works are to be constructed; a legal description of the land; location of the work; sketches of construction; name and address of the person who prepared the plans and specifications of construction, and who will construct the proposed work; general purpose of the proposed work; and other information as DEP or the WMD may require.³²

Notice Requirements for ERP Applications and Intended Agency Action

DEP or the WMD must send a notice of receipt of permit application to anyone who filed a written request for notification of any pending applications affecting the particular designated area. The notice must contain the applicant's name and address; a brief description of the proposed activity, including any mitigation; the location of the proposed activity, including whether it is located within an Outstanding Florida Water or aquatic preserve; a map identifying the location of the proposed activity; a depiction of the proposed activity; a name or number identifying the application and the office where the application can be inspected; and any other information required by rule.³³

DEP or the WMD may also publish, or require an applicant to publish at the applicant's expense, in a newspaper of general circulation within the affected area, a notice of receipt of the application and a notice of intended agency action. DEP or the WMD must also provide notice of this intended agency action to the applicant and to people who requested a copy of the intended agency action for that specific application.³⁴

Types and Duration of ERPs

General permits are provided for certain activities that have been determined to have minimal adverse environmental effect to the water resources of the state when conducted in compliance with the terms and conditions of the permit.³⁵ Individual permits are required for activities that do not qualify for a general permit.³⁶ Individual permits are issued for five years, but an applicant may request a longer permit duration by providing reasonable assurance that:

- The project cannot reasonably be expected to be completed within five years after commencement of construction; and
- The impacts of the activity, considering its nature, the size of the project, and any required mitigation, can be accurately assessed and offset where appropriate, and the terms of the permit can be met for the duration of the requested permit.³⁷

²⁶ S. 373.403(1), F.S., defines "dam" to mean any artificial or natural barrier, with appurtenant works, raised to obstruct or impound, or which does obstruct or impound, any of the surface waters of the state.

²⁷ S. 373.403(3), F.S., defines "impoundment" to mean any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.

²⁸ S. 373.403(4), F.S., defines "reservoir" to mean any artificial or natural holding area which contains or will contain the water impounded by a dam.

²⁹ S. 373.403(2), F.S., defines "appurtenant works" to mean any artificial improvements to a dam, which might affect the safety of such dam or, when employed, might affect the holding capacity of such dam or of the reservoir or impoundment created by such dam.

³⁰ S. 373.403(5), F.S., defines "works" to mean all artificial structures, including, but not limited to, ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, drains water into, or is placed in or across the waters in the state.

³¹ S. 373.413(1), F.S.

³² S. 373.413(2), F.S.

³³ S. 373.413(3), F.S.

³⁴ S. 373.413(4), F.S.

³⁵ S. 403.814(1), F.S.

³⁶ R. 62-330.054(1), F.A.C.

³⁷ R. 62-330.320(2), F.A.C.; r. 62-330.010, F.A.C. - *Environmental Resource Permit Applicant's Handbook Volume I*, 6.1.2.2 (June 1, 2018).

A permittee may also request to extend the duration of an individual permit. The request must be granted under certain conditions if the request is received by DEP or the WMD before the permit expires. A request to extend the permit for up to five years is processed as a minor modification of the permit and is not subject to public notification requirements.³⁸

ERP Permitting Exceptions

Current law provides exceptions from ERP³⁹ permitting for certain types of projects.⁴⁰ Generally, these permit exceptions restrict how the project is undertaken, provide size and location requirements, or provide for maintenance, repair, or replacement of existing structures.⁴¹ These exceptions do not relieve an applicant from obtaining permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a WMD or from complying with local pollution control programs or other requirements of local governments.⁴²

A local government, as part of its permitting process, may require applicants to provide verification from DEP that the activity is exempt. To expedite this process, DEP developed an online self-certification process for individuals to verify whether the activity is exempt from regulation.⁴³ Currently, there is no fee for using the online self-certification process but DEP is authorized to charge a \$100 fee to determine if an activity is exempt.⁴⁴

Effect of Proposed Changes

The bill amends s. 403.813(1), F.S., prohibiting local governments from requiring a person claiming an exception to ERP permitting to provide further verification from DEP that a particular activity meets an ERP permit exception.

Dock and Pier Replacement and Repair ERP Exception

Present Situation

An exception from ERP permitting applies for the replacement or repair of existing docks and piers if fill⁴⁵ material is not used and the replacement or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired. The exception allows the use of different construction materials or minor deviations to allow upgrades to current structural and design standards.⁴⁶

Other ERP permit exceptions that allow for repair or replacement also require the repair or replacement to be of the same configuration, location, length, and dimensions. These include the repair or replacement of stormwater pipes or culverts,⁴⁷ open-trestle foot bridges and vehicular bridges that are

³⁸ R. 62-330.315(2), F.A.C.

³⁹ See chs. 373 and 403, F.S.; ch. 61-691, Laws of Fla., created the Southwest Florida WMD; chs. 25214 and 25270, 1949, Laws of Fla., created what is known today as the South Florida WMD.

⁴⁰ S. 403.813(1), F.S.

⁴¹ S. 403.813(1)(a)-(v), F.S.

⁴² S. 403.813(1), F.S.

⁴³ DEP, *Submitting an ERP*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/submitting-erp> (last visited Mar. 5, 2019).

⁴⁴ DEP, *Submitting an ERP*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/submitting-erp> (last visited Mar. 5, 2019); see also r. 62-4.050(4)(e)9, F.A.C.

⁴⁵ S. 373.403(14), F.S., defines “filling” to mean the deposition, by any means, of materials in surface waters or wetlands, as delineated in s. 373.421(1), F.S.

⁴⁶ S. 403.813(1)(d), F.S.

⁴⁷ S. 403.813(1)(h), F.S.

100 feet or less in length and two lanes or less in width,⁴⁸ and insect control impoundment dikes, which are less than 100 feet in length.⁴⁹ Another ERP exception, regarding the restoration of seawalls, allows for the restoration of the seawall to take place at the previous location or upland of, or within 18 inches waterward of, the previous location.⁵⁰

Effect of Proposed Changes

The bill amends s. 403.813(1)(d), F.S., regarding the ERP exception for replacement or repair of existing docks or piers. The bill removes the requirement that a dock or pier replacement or repair remain in the same location and be of the same configuration and dimensions as the existing dock or pier. The bill provides that an ERP exception for the replacement or repair of an existing dock or pier is allowed if the replaced or repaired dock:

- Is within five feet of the same location;
- Is no larger in size than the existing dock or pier; and
- There are no additional aquatic resources that are adversely and permanently impacted by the replacement or repair.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.706, F.S., relating to local government solid waste responsibilities.

Section 2. Amends s. 403.813, F.S., relating to ERP exceptions.

Section 3. Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a positive fiscal impact on local governments if they are no longer required to collect, transport, or process contaminated recyclable material.

2. Expenditures:

The bill may have a negative fiscal impact on local governments that must negotiate new required contract terms, including defining “contaminated recyclable materials,” with residential recycling collectors and recovered materials processing facilities.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector in providing that residential recycling collectors are not required to collect or transport contaminated recyclable materials and recovered

⁴⁸ S. 403.813(1)(l), F.S.

⁴⁹ S. 403.813(1)(p), F.S.

⁵⁰ S. 403.813(1)(e), F.S.

materials processing facilities are not required to process contaminated recyclable materials except pursuant to contract terms provided by the bill.

The bill may have a positive fiscal impact on the private sector by prohibiting a local government from requiring verification from DEP of a permit exception under s. 403.813, F.S. The bill may also have a positive fiscal impact on the private sector by expanding the permit exception for the replacement or repair of existing docks and piers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from the bill as originally filed in that the PCS revises laws governing certain ERP permitting exceptions and local government verification of exceptions.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.